

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13**

ENTERCOM ILLINOIS, LLC

Employer

and

Case 13-RC-231665

**SCREEN ACTORS GUILD – AMERICAN
FEDERATION OF TELEVISION AND RADIO
ARTISTS**

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, (“the Act”), a hearing was held on December 6, 2018, before a hearing officer of the National Labor Relations Board (“the Board”). Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated to the undersigned its authority in this proceeding.¹

I. Issue

Petitioner is seeking to represent a unit of all full-time and regular part-time digital content producers employed by Entercom Illinois, LLC (“Employer”) working out of WBBM-AM/WCFS-FM, excluding all other employees, office clerical employees and guards, professional employees and supervisors as defined in the National Labor Relations Act (“Act”). The unit sought by Petitioner consists of five employees. Petitioner is seeking an *Armour-Globe*² self-determination election to determine whether these employees wish to be included in the existing Unit of WBBM-AM/WCFS-FM staff newsmen (“WBBM-AM staff newsmen”), including reporters, correspondents, commentators and analysts, employed by the Employer, working out of WBBM-AM/WCFS-FM.

¹ Upon the entire record in this proceeding, the undersigned finds:

- a) The hearing officer’s rulings made at the hearing are free from prejudicial error and are hereby affirmed.
- b) The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
- c) The Petitioner is a labor organization within the meaning of the Act.
- d) There is no collective-bargaining agreement covering the employees in the voting group sought by the Petitioner or the unit proposed by the Employer, and the parties do not contend that there is any contract bar to this proceeding.
- e) A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of 9(c)(1) and Sections 2(6) and (7) of the Act.

² *Globe Machining & Stamping Co.*, 3 NLRB 294 (1937); *Armour & Co.*, 40 NLRB 1333 (1942).

The Employer argues that the unit sought by Petitioner is not appropriate and an appropriate unit must also include all digital content producers who work out of the Employer's Chicago offices (including digital content producers who work out of WSCR, WXRT, WJMK, WBBM-FM, and WUSN.) The Employer further contends that the petitioned-for unit of digital content producers does not share a community of interest with the existing Unit of WBBM-AM staff newsmen because those five digital content producers must be included with all digital content producers at its Chicago stations.³ Finally, the Employer takes the position that there are "definite and imminent" changes to its digital content production that will cause the unit to expand to the nine digital content producers currently working for the Employer out of its Chicago, IL offices, which makes the current petition untimely.⁴

II. Decision

Based on the record and relevant Board law, I find that the petitioned-for unit of WBBM-AM digital content producers constitute an identifiable, distinct segment and share a community of interest with the existing Unit of WBBM-AM staff newsmen currently represented by Petitioner. Additionally, I find that the WBBM-AM digital content producers and the WBBM-AM staff newsmen share a community of interest sufficiently distinct from the digital content producers working for the Employer's other radio stations to constitute a separate appropriate unit. Further, I do not find that the petition was filed prematurely due to any definite or imminent plans to expand the unit.

Accordingly, I find that the WBBM-AM digital content producers can vote as to whether to be included in the WBBM-AM staff newsmen unit currently represented by Petitioner, and direct an election in that unit.

III. Statement of Facts

A. Employer's Business Organization

The Employer is a media and entertainment company that operates radio stations and digital media platforms, organizes live events, and provides integrated marketing solutions. In November 2017 the Employer's parent, Entercom Communications Corp. ("Entercom"), merged

³ The Hearing Officer informed the parties that the Regional Director would allow them to file points of authority on the issue of imminent and definite changes to the Employer's operation or the size of the bargaining unit. Rather, the Employer's brief covered subjects beyond that allowed by the Regional Director. I have considered only the points of authority and related cases that pertain to the subject permitted.

⁴The parties agreed on the record that the Sr. Videographer, Graphic Designer and Video Content Producer classifications are not at issue in this matter, and that these classifications should not be included in a bargaining unit with the Digital Content Producers.

with CBS Radio. As a result of the merger, the Employer now operates six brands (encompassing seven signals/radio licenses) in the Chicago area:

- WBBM News Radio (WBBM-AM and WCFS-FM (simulcast)), news and sports format;
- The Score (WSCR-AM), sports news format;
- JAMS (WBMX-FM), classic hip-hop and R&B format;
- XRT (WXRT-FM), AAA rock format;
- B96 (WBBM-FM), top-40 pop music format;
- US99 (WUSN-FM), country music format; and

The Employer operates terrestrial radio stations, digital content channels (websites, social media, e.g. Facebook and Twitter, podcasts, text alerts and video feeds), organizes live events and offers integrated marketing solutions.

Certain of the Employer's employees are represented by labor organizations: the Writers Guild represents WBBM-AM writers and assistant producers; the IBEW represents WSCR producers and, under a separate national agreement, WBBM-AM/WBBM-FM engineers. Petitioner, under three separate agreements, represents WBBM-AM staff newsmen (existing unit the petitioned-for employees seeking a self-determination election), WBMX on-air employees and WBBM-FM (B96) on-air employees and, under a national agreement, on-air traffic reporters.

Petitioner and the Employer are currently working under a 2015 - 2018 collective bargaining agreement for WBBM-AM staff newsmen, the most recent agreement covers, "staff newsmen, as defined herein, including reporters, correspondents, commentators and analysts, employed by the Company in Chicago..." The collective bargaining agreement defines the duties and services of these employees as, "the delivery of news on radio and to the gathering; reporting, editing, writing, and preparing of such news." This unit is the pre-existing unit that the Petitioner is seeking a self-determination election for the five WBBM-AM digital content producers.

The Employer employs a total of nine digital content producers across its six brands in the Chicago area. There is the petitioned-for five digital content producers for WBBM-AM (two full-time and three part-time), one digital content producer for XRT and JAMS, one digital content producer for B96 and US99, and two digital content producers for The Score (one full-time and one part-time).

B. Departmental Organization

As stated above, the Employer operates six radio stations. James DeCastro is the Senior Vice President and Market Manager for Entercom in Chicago. The record contains organizational charts which show the reporting structure for the Employer's Chicago operations. Each station has separate operations and multiple layers of management. Each of the radio stations has an Operations Manager who reports to DeCastro, except for B96 and JAMS, which

have one Program Director overseeing both stations. The Program Director title is sometimes used interchangeably with Operations Manager. Programming for all of the Employer's Chicago radio stations except WBBM-AM falls under the direction of Vice President of Programming, Todd Cavanaugh. WBBM-AM programming falls under Ron Gleason. In addition, the Employer has a Director of Digital Content who has a role in managing the Digital Content Producers.

WBBM-AM⁵

The WBBM-AM newsroom is located on the 11th floor of the Prudential Building where its entire WBBM-AM staff is based. At WBBM-AM, Ron Gleason is responsible for managing the staff and content that is produced at the station. WBBM News Managing Editor Julie Mann and WBBM News Director of Traffic Reporting Kevin Scott report to Gleason. Mann and Gleason manage the WBBM staff newsmen (often referred to as on-air talent) who are represented by Petitioner. Gleason also provides daily direction and oversight over the petitioned-for five WBBM-AM digital content producers. Director of Digital Content Keith Spariglia and Ron Gleason also meet weekly with the full time WBBM-AM DCPs to make sure the digital content is representative of what is being broadcast on air at WBBM-AM.

WBBM-AM is a news and sports format radio station that distributes news stories to the public over the air and digitally. WBBM-AM managing editor Julie Mann sends out a daily e-mail each morning to members of the WBBM-AM newsroom staff, including the WBBM-AM digital content producers. The e-mail contains assignments for the reporters, but the WBBM-AM digital content producers also review the e-mail in order to determine which stories might go on the WBBM-AM website that day. After reviewing the e-mail, the WBBM-AM digital content producers will communicate with the reporters either in person, via e-mail, via phone or text regarding those stories to determine what multimedia is necessary for the website or to obtain a written form of the reporter's audio piece. They communicate about where the reporter is going, the content that the reporter is covering; they discuss visuals, photos, social media, video, script, and interview details. According to the WBBM-AM reporter's testimony, the reporter and digital content producer will communicate on every aspect of what the reporter is putting out there. They may also collaborate on social media projects such as tweeting or Facebook Live. The WBBM-AM reporters and WBBM-AM digital content producers are in communication with each other on a daily basis, up to 45% of one of the WBBM-AM digital content producer's day and about 20% for the other WBBM-AM digital content producer. In addition to daily contact with reporters, the WBBM-AM digital content producers also have daily contact with Gleason and Mann.

⁵ WBBM-AM refers to WBBM News Radio which is simulcast on WBBM-AM and WCFS-FM, and will be referred to as WBBM-AM in this decision.

The WBBM-AM digital content producers take the content that WBBM-AM staff newsmen create and report on-air for WBBM News Radio and turn that into digital content; adding texts with photos and audio that can be put on a website. They look for stories that may appear on the various wire services that may have interest to WBBM-AM's website visitors. The WBBM-AM digital content producers also collaborate with WBBM-AM staff newsmen to create more elaborate productions with video. The WBBM-AM digital content producers may create a video for the reporters or illustrate an audio piece, which is referred to as a wrap. The wraps would then be included on the WBBM-AM webpage or social media page. They also conduct their own reporting and write original news articles that they are credited for, and which may appear on the WBBM-AM website. They are responsible for sending out push notifications, which are text alerts that are sent out to the smart phones of people who signed up for the service. The push notifications alert the subscribers about breaking news stories or stories of interest. WBBM-AM digital content producers also go out into the field to cover events or stories with the WBBM-AM staff newsmen.

Both groups of WBBM-AM newsroom employees – staff newsmen and digital content producers – work particular shifts. One of the WBBM-AM staff newsmen testified that she works Monday, Tuesday, Wednesday, and Thursday from 10:00a.m. to 6:00p.m., and 12:00p.m. - 8:00p.m. on Sundays. The two full-time WBBM-AM digital content producers work back to back shifts Monday through Friday covering 6:00a.m. to 11:00p.m., and the part-time digital content producers work on weekends and fill in for the two full-time digital content producers whenever they are sick, on vacation, or otherwise unavailable. Only the WBBM-AM digital content producers fill in for one another.

WBBM-AM operates on a platform called News Boss which is an internal news gathering system. All of the audio gets uploaded to News Boss, the editing of the audio is done through News Boss, and reporters write their scripts and put their audio in News Boss. On air talent can read stories that have been uploaded to News Boss or they can play audio directly from News Boss on the air. In addition, News Boss contains an internal email system that the WBBM-AM newsroom uses to communicate with each other. The WBBM-AM digital content producers use the News Boss e-mail system to communicate with other members of the WBBM-AM newsroom. News Boss is not accessible to the digital content producers who work for The Score or the music stations.

The WBBM-AM digital content producers occasionally interact with digital content producers from The Score, XRT / JAMS, and B96 / US-99. The afternoon WBBM-AM digital content producer and The Score's digital content producer will exchange emails several times per week to make sure that the major sports stories are covered. WBBM-AM broadcasts Chicago Bears games and WBBM-AM wants Bears coverage to appear on its website. The afternoon WBBM-AM digital content producer spends about 5% of his time doing a daily newsletter for The Score and typically does this independently. The morning WBBM digital content producer

rarely interacts with The Score's digital content producers. The only other times when the digital content producers from different stations interact are limited to the occasional special event where a WBBM-AM digital content producer may work with a digital content producer from another station.

The Score

At The Score, the staff is physically located on the 9th floor of the Prudential Building. Operations Manager Mitch Rosen runs the day to day operations at The Score with oversight of programming by VP of Programming, Todd Cavanaugh. Under Rosen is The Score's Sports Director who manages the on air talent at the station. Rosen also has a role in the day to day functions of The Score's two digital content producers. While the Employer's organizational chart lists two employees as its two digital content producers, The Score's website lists them as reporters along with other on-air talent. Director of Digital Content Keith Spariglia has weekly meetings with The Score Program Director and The Score digital content producers to make sure the digital content is representative of what is being broadcast on air at The Score.

The limited testimony regarding the operations at The Score suggests that there is a similar structure in managing the sports content as there is for the news and sports content at WBBM-AM. This would include regular interactions between the station's on-air talent and digital content producers. The Score digital content producers are responsible for organizing, editing, and writing content for the distribution through its digital platforms. One of the Score digital content producers testified that he oversees 670TheScore.com's content and is responsible for getting the links and stories out on Facebook, Twitter, or having The Score's on-air employees reference the stories that are on-line. Occasionally he will cross-post stories on The Score and WBBM-AM by tagging those stories, especially regarding the Chicago Bears. The Score digital content producers also produce original content for The Score and attend live sporting events.

The Score has two digital content producers - a main full-time digital content producer, and then a backup digital content producer who primarily works for the Employer in a sports reporter role. The backup digital content producer for The Score will post content to The Score's website whenever the main digital content producer is out or cannot cover the duty. Just as the WBBM-AM digital content producers, the digital content producers from The Score only fill in for each other and not for any other digital content producers.

FM Music Stations⁶

The Employer's four FM music stations have little overlap with either WBBM-AM or The Score. Although the record is limited on the details at these stations, each of these stations have two or three levels of management. At B96 and JAMS, Todd Cavanah is the Program Director and there is also an Assistant Program Director / Music Director at each station. At XRT and US99, there are three levels of management. The three levels at XRT are comprised of VP of Programming Todd Cavanah, Operations Manager Greg Solk and Music Director John Farneda with the on-air talent reporting directly to Farneda. The three levels at US99 are comprised of Cavanah, Program Director Kenny Jay and Music Director Marci Braun with the on-air talent reporting directly to Braun. XRT and JAMS share one digital content producer, and B96 and US99 share one digital content producer. These two digital content producers report to Director of Digital Content Keith Sgariglia as well as Manager of Digital Operations Zach Nechvatal. Sgariglia has regular, separate meetings with each station manager at these FM stations which are also attended by the digital content producer for the respective station.

These two digital content producers are located on the 9th floor of the Prudential Building and generally work Monday through Friday 9:00am to 5:00pm but may also work evenings and weekends to cover events. The B96 / US-99 digital content producer will produce lifestyle content, such as articles about events taking place in the Chicagoland area. These digital content producers will also attend music concerts and promotional events associated with their brand. They do not cover shifts for digital content producers at WBBM-AM or The Score.

There is little to no interaction that employees at these music stations have with employees at WBBM-AM and The Score.

Content Management System

The Employer has a content management system called Frequency that the digital content producers use to generate content and build the Employer's websites. The digital content producers will post stories to the digital platform, such as a station's website or a social media website, via the content management system.⁷ The digital content producers log onto the central portal, and then they can select different websites to access in the Chicago group. The WBBM-AM digital content producers spend 98 percent of their time using the WBBM News Radio website. Currently, the digital content producers only load content to their own station's websites, but they occasionally may gain access to one of the Employer's other stations to share stories if the need arises. Digital content producers for The Score and WBBM-AM sporadically

⁶ The four music stations include B96, JAMS, XRT and US99.

⁷ There was testimony that the Employer plans to roll out a new content management system in 2019 but details of how this would impact the work was limited. The digital content producers who work on the music side should have access to this new system in the first quarter of 2019 and the digital content producers in sports and news should have access starting in the second quarter of 2019.

share stories with other stations while there is no evidence that the digital content producers for the music stations share stories with other stations.

C. Planned Changes

The record demonstrates that, in about June 2019, there will be some changes to the physical layout of the newsroom. The Employer is planning on consolidating the three floors that it has in the Prudential Building to two floors, with the newsroom moving from the 11th to the 9th floor. In addition to this change, the Employer is also planning on creating a six-desk pod outside of the newsroom that will house four digital content producers (the five WBBM-AM digital content producers will each share one desk since they work separate shifts), a news producer and a sports anchor.

The other change that the Employer has planned is a change to the content management system that the Employer uses. The Director of Digital Content testified that the new platform should be rolling out on Radio.com in late December, the first quarter for the music sites, and the second quarter for the news and sports sites. The Director of Digital Content testified that the new content management system should allow digital content producers to create content in one place and then distribute that content to the Employer's channels, radio station sites, social media, and third-party syndication partners. The digital content producers are not familiar with any of the details of the new content management system as of the date of the hearing. The Score's digital content producer and a WBBM-AM digital content producer each testified that they do not expect the new content management system to change their workflow. The digital content manager from The Score testified that the new system would not have much impact on his job, but it might make it a little bit easier in terms of making a change to a piece of content on one site that would be automatically changed on another site.

IV. Analysis

A. The Petitioned-for WBBM-AM Digital Content Producers Share a Community of Interest With the Staff Newspersons in the Existing Unit

An *Armour-Globe* self-determination election permits employees sharing a community of interest with an already represented unit of employees to vote whether to join that unit. *Globe Machine & Stamping Co.*, 3 NLRB 294 (1937); *Armour & Co.*, 40 NLRB 1333 (1942); *St. Vincent Charity Medical Center*, 357 NLRB 854 (2011). See also *NLRB v. Raytheon Co.*, 918 F.2d 249, 251 (1st Cir. 1990). Furthermore, the Board has held that a self-determination election is the proper method by which an incumbent union, such as the Petitioner here, may add unrepresented employees to its existing unit, if the employees sought to be included share a community of interest with unit employees and "constitute an identifiable, distinct segment so as to constitute an appropriate voting group." *Warner-Lambert Co.*, 298 NLRB 993, 995 (1990).

The petitioned-for employees need not constitute a separate appropriate unit by themselves in order to be added to an existing unit. *Id.* Here, the Petitioner seeks a self-determination election in a separate appropriate voting group pursuant to *Armour-Globe*, not the creation of, and election in, a separate residual unit. In these circumstances, the proper analysis is whether the employees in the proposed voting group share a community of interest with the currently represented employees and whether they constitute an identifiable, distinct segment. *St. Vincent Charity Medical Center*, *supra*.

The evidence shows that the WBBM staff newsmen and WBBM-AM digital content producers (referred herein as WBBM-AM newsroom employees) comprise an integrated group that reports the news for WBBM-AM. These WBBM-AM newsroom employees collaborate among themselves regularly to push stories out to various platforms. The staff newsmen and digital content producers all have a background and education in journalism. The distribution of the news over the air and online is done under the direction of Ron Gleason who is the only manager who has daily contact with all of these employees. Gleason is ultimately responsible for assuring that what is on air also appears online and vice versa. While the staff newsmen report their stories over the air, the WBBM-AM digital content producers supplement these stories with audio and video enhancements and push them out on various digital platforms. The WBBM-AM staff newsmen and WBBM-AM digital content producers regularly collaborate on news stories and social media projects such as tweeting or Facebook Live at specific events. WBBM-AM digital content producers may spend up to 45% of their day collaborating with staff newsmen on stories which includes going out into the field together. The WBBM-AM digital content producers also occasionally write, create and publish their own stories similar to the staff newsmen. The repeated theme throughout the record is that these two groups of WBBM-AM newsroom employees work as a team.

The WBBM-AM staff newsmen and WBBM-AM digital content producers share several of the same terms and conditions of employment. WBBM-AM Director of News and Programming, Ron Gleason, undisputedly supervises the WBBM-AM staff newsmen. Gleason is also responsible for scheduling WBBM-AM digital content producers, approving time off, such as vacation requests and sick days, and granting overtime or compensatory time requests. Gleason has also hired WBBM-AM digital content producers on his own and in conjunction with the Director of Digital Content. Although the Employer claims that the Director of Digital Content Keith Sparaglia is the primary supervisor over the WBBM-AM digital content producers, the evidence shows that there is significantly less interaction between Sparaglia and the WBBM-AM digital content producers.

The primary distinction between these two groups of WBBM newsroom employees is the platform where the news is delivered. The delivery of news through the digital platforms has evolved as a critical means to supplement the delivery of news on air. When the daily news

assignments are sent out via News Boss in the morning, the digital content producers review them and work with the staff newsmen to figure out how to effectively add audio and visual content so that news can be delivered on WBBM-AM's digital platforms.

For the reasons stated above, the petitioned-for unit of five WBBM-AM digital content producers share a community of interest with the WBBM-AM staff newsmen and also comprise an identifiable, distinct segment of WBBM-AM operations so as to constitute an appropriate voting unit.

B. Community of interest between WBBM-AM newsroom employees and digital content producers

In *PCC Structurals Inc.*, 365 NLRB No. 160 (2017), the Board abandoned the “overwhelming” community of interest standard in *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB No. 83 (2011) and returned to a traditional community of interest test. Under that test, the Board analyzes “whether employees in the proposed unit share a community of interest sufficiently distinct from the interests of employees excluded from the unit to warrant a separate bargaining unit.” *PCC Structurals Inc.*, 365 NLRB No. 160 slip op. at 11 (2017).⁸ When making this determination, the Board applies a multi-factor test that requires the Board to assess whether the employees are organized into a separate department; have distinct skills and training; have distinct job functions and perform distinct work, including inquiry into the amount and type of job overlap between classifications; are functionally integrated with the Employer's other employees; have frequent contact with other employees; interchange with other employees; have distinct terms and conditions of employment; and are separately supervised. *Id.* (citing *United Operations*, 338 NLRB 123 (2002)).

i. Departmental Organization

The Employer's operations are divided up by radio station and the digital content producers at The Score and music stations are in separate departments from one another and the WBBM-AM newsroom employees. The Employer acknowledged that there would be references to the radio stations being “siloed”, or independently operated, but claim that these “silos” are no longer the case as there is now a more integrated operational structure. The evidence does not support this assertion. The Employer is organized into separate departments based on the radio station or brand where an employee works. Each radio station has an operations manager or

⁸ Although in *PCC Structurals Inc.*, the Board analyzed whether the employees in the proposed unit shared a community of interest sufficiently distinct from the interests of employees excluded from the unit to warrant a separate bargaining unit, the Board need not determine whether the petitioned-for employees constitute a separate appropriate unit by themselves in order to be added to an existing unit. *Warner-Lambert Co.*, 298 NLRB 993, 995 (1990). In *Warner-Lambert Co.*, the Board analyzed whether the petitioned-for employees share a closer community of interest with the existing unit than with the employees excluded from the unit.⁹ The Petitioner has waived its right to possessing the voter list for a full ten days prior to the election.

programming director who oversees that particular radio station. The WBBM-AM newsroom employees report to WBBM News Operations Manager and Director of News and Programming Ron Gleason. The recent job description for a part-time WBBM-AM digital content producer specifically states that WBBM Newsradio is seeking a candidate who will develop original stories and content exclusively for WBBM's digital platforms, will work in and with the WBBM newsroom, and who will take direction from WBBM's management team. WBBM-AM newsroom employees sit with one another and on a separate floor from other digital content producers.

While it is true the Board will not approve of combinations of employees that are too narrow in scope or that have no rational basis, it has, under certain circumstances, approved of units that exclude employees in the same administrative grouping. *Home Depot USA*, 331 NLRB 1289, 1289 (2000). Although the WBBM-AM digital content producers and the digital content producers from the Employer's other Chicago stations all report, to varying degrees, to Director of Digital Content, the Employer's own organizational chart shows that the digital content producers are grouped and identified on the basis of the station for which they work. The job posting for part-time WBBM-AM digital content producer emphasized that WBBM-AM is the radio station where the digital content producer would work. The WBBM-AM newsroom employees are all on the same News Boss e-mail distribution lists which is critical to day to day operations while the digital content producers from other stations are not. Digital content producers' work is distinguished by the station for which they work.

Digital content for all of the stations is managed by Director of Digital Content Keith Sgariglia who meets regularly with representatives from each station. Only the digital content producer(s) from the respective station attends that respective meeting. There are no meetings where all nine digital content producers attend. Only the WBBM-AM digital content producers attend staff meetings for the WBBM-AM news staff.

ii. Skills and Training

For this factor, the Board analyzes if disputed employees have similar requirements to obtain employment, if they have similar job descriptions or licensure requirements, whether they participate in the same Employer training programs, or if they use similar equipment. *Casino Aztar*, 349 NLRB 603 (2007); *J.C. Penny Co., Inc.*, 328 NLRB 766 (1999); *Brand Precision Serv.*, 313 NLRB 657 (1994). The skills of the digital content producers are similar inasmuch as they all develop and post content to digital platforms. The WBBM-AM digital content producers, however, are the only digital content producers trained to use the WBBM-AM internal news gathering system, News Boss, which is the system used by WBBM-AM staff newsmen.

iii. Job Functions and Work

While all digital content producers generally have the same job functions of publishing digital content, their functions and work are specific to the radio station for which they work. The WBBM-AM newsroom employees, which includes the WBBM- AM digital content producers, have an integrated process among themselves to report news for their station while the digital content producers from The Score focus exclusively on sports and the digital content producers who work for the FM music stations focus on music, lifestyle, pop culture and events.

The only regular crossover that occurs is the one WBBM-AM digital content producer who publishes the daily newsletter for The Score. However, this assignment is generally done independently by the WBBM-AM digital content producer and only takes up about 5% of his workday.

iv. Functional Integration

Functional integration refers to when employees' work constitutes integral elements of an employer's production process or business. Functional integration exists when employees in a unit sought by a union work on different phases of the same product or as a group provides a service. Another example of functional integration is when the Employer's work flow involves all employees in a unit sought by a union. Evidence that employees work together on the same matters, have frequent contact with one another, and perform similar functions is relevant when examining whether functional integration exists. *See Transerv Systems*, 311 NLRB 766 (1993). On the other hand, if functional integration does not result in contact among employees in the unit sought by a union, the existence of functional integration has less weight.

The functional integration between the WBBM-AM newsroom employees and employees at other stations, in particular the digital content producers, is minimal. The radio stations operate separately aside from the occasional sharing of specific stories that cross over to another area of news. An overwhelming majority of a station's content is generated through the work of employees assigned to that station. Due to the independent operation of each station, the interaction between digital content producers from other stations WBBM-AM digital content is infrequent. There is virtually no functional integration between the WBBM-AM newsroom employees and digital content producers at the Employer's other Chicago stations.

There are no examples on the record of digital content producers from The Score and the music stations having any interaction with WBBM-AM staff newsmen. There is testimony from a WBBM-AM reporter / anchor that she does not work with digital content producers from any of the other Chicago stations. Likewise, the WBBM-AM digital content producers have very limited interaction with on-air talent from the other stations. The number of times that the

WBBM-AM digital content producer works with on-air talent from other stations is limited to a couple of events per year.

The two The Score digital content producers and the two digital content producers at the music stations have no interaction with one another.

v. Frequent Contact with other employees

The four non-WBBM-AM digital content producers have little to no interaction with the WBBM-AM newsroom employees. To the extent that there is contact between employees, it is limited to electronic communication between one of The Score digital content producers and the afternoon WBBM-AM digital content producer in working on The Score newsletter. On occasion, the WBBM-AM digital content producer may have to check with The Score digital content producer regarding the sports stories to include in his daily newsletter or other sports news that may be worth including on a WBBM-AM platform.

Since each brand has its own operations manager who supervises his own employees and the WBBM-AM newsroom employees and employees from other stations are located on separate floors, there is minimal contact among employees across brands. Other than mentioned above, any other interaction between WBBM-AM newsroom employees and digital content producers at other stations is limited to an occasional lifestyle, music or sporting event that a WBBM-AM digital content producer may be covering.

vi. Interchange

There is no temporary or permanent interchange among the digital content producers who work for different stations. Instead, the WBBM-AM digital content producers fill in for each other when necessary, and the digital content producers from The Score likewise fill in for each other when necessary.

There is no evidence in the record of any interchange between WBBM-AM newsroom employees and digital content producers from the other stations, or between the digital content producers at the music stations and any other group.

vii. Terms and Conditions of Employment

Terms and conditions of employment include whether employees receive similar wage ranges and are paid in a similar fashion (for example hourly); whether employees have the same fringe benefits; and whether employees are subject to the same work rules, disciplinary policies and other terms of employment that might be described in an employee handbook. *See, e.g., Overnite Trans. Co.*, 322 NLRB 347 (1996).

The WBBM newsroom employees and digital content producers from other stations work under many of the same policies and procedures that are set forth in the Employer's handbook. While the WBBM-AM staff newsmen can elect to take Petitioner's health insurance coverage, they can also elect to take the same healthcare coverage that digital content producers receive from the Employer. Vacation benefits are similar for all employees. All employees are paid under the same payroll system. All employees are shift employees and all digital content producers are occasionally asked to work evenings and weekends. However, the WBBM-AM newsroom employees generally cover more daily hours than digital content producers at other stations.

viii. Supervision

Separate supervision of two groups tends to weigh against their inclusion in the same unit, but is not dispositive of finding a community of interest. *Casino Aztar*, 349 NLRB at 607, fn. 11. However, supervision of both the day-to-day operations and those with the authority to hire, fire, discipline, and promote are important under this factor. *NRC Corporation*, 236 NLRB 215 (1978). The supervisory element weighs against finding the WBBM-AM newsroom employees and digital content producers at other stations being in the same bargaining unit.

Digital content producers have multiple supervisors for their work. The record shows that at least The Score and WBBM-AM digital content producers' day to day supervision is done by their respective station operations manager, and the broader management of the digital content is overseen by Director of Digital Content, Keith Sgariglia. The other two digital content producers are jointly supervised by Sgariglia and Manager of Digital Operations, Zack Nechvatal. For the WBBM-AM digital content producers, the evidence establishes that the Director of Digital Content has much less frequent interaction and communication with the WBBM-AM digital content producers than Ron Gleason.

The job description for the part-time WBBM-AM digital content producer states that the digital content producer will take direction from WBBM's management team, a team that does not supervise digital content producers at the other stations. Gleason gives the WBBM-AM digital content producers assignments. For example, he directed one of the digital content producers to live stream a protest that occurred during the summer of 2018. Gleason may also direct the WBBM-AM digital content producers to send out a push notification. Gleason communicates with the digital content producers to ensure that what is on the air is also online and that breaking news stories are online. The WBBM-AM digital content producers testified that they have contact with Ron Gleason daily and contact with Sgariglia every few days to at least once per week. Gleason sits about fifteen to twenty feet away from the WBBM-AM digital content producers while Sgariglia sits on a different floor. Gleason has no interaction let alone supervisory authority over digital content producers at other stations.

The digital content producers who work at The Score and the FM music stations are supervised by Director of Digital Content Keith Sgariglia as well as the respective operations manager for the station. Just as the WBBM-AM digital content producers take direction from the WBBM-AM Director of News and Programming, The Score digital content producers take direction from The Score's operations manager. The Score's operations manager does not have any role in managing or supervising the WBBM-AM digital content producers.

In conclusion, the above factors weigh in favor of not finding that the digital content producers at the non-WBBM-AM stations share a community of interest with the WBBM-AM newsroom employees. The employees work in separate departments, their work content is different, their work is not functionally integrated, they do not collaborate on assignments, have very minimal interaction, do not have any temporary or permanent interchange with each other, and do not have common primary supervisors.

C. The Petition is not Premature as the Present Employee Complement is Substantial and Representative of the Unit Workforce to be Employed in the Near Future

In cases involving "expanding unit" arguments, the test is whether the present employee complement is substantial and representative of the unit workforce to be employed in the near future. *Yellowstone International Mailing*, 332 NLRB 386 (2000). If the Board finds the existing complement is substantial and representative, it will direct an immediate election. See *General Cable Corp.*, 173 NLRB 251 (1969). In general, the Board finds an existing complement of employees substantial and representative when at least 30 percent of the eventual employee complement is employed in 50 percent of the anticipated job classifications. *Shares, Inc.*, 343 NLRB 455, 455 fn. 2 (2004); *Custom Deliveries*, 315 NLRB 1018, 1019 fn. 8 (1994).

The Employer argues that the five petitioned-for WBBM-AM digital content producers will have their work altered to such a degree that the only appropriate unit will have to include them with the four digital content producers at its other Chicagoland stations. The record is devoid of evidence demonstrating a definitive, imminent and substantial change to the work of the WBBM-AM digital content producers or other digital content producers that will necessitate them all being included in a single unit. The primary change is the physical relocation of these ten employees to an area where they will sit in adjacent office spaces. There is no basis to find that this will change their day to day work as it was stated by the Director of Digital Content that this is a philosophical change in addition to a physical change. The other change alluded to is a change to the content management system, however, the testimony only covered this in the broader context of its future implementation and no evidence was provided to suggest that this would have much, if any, impact on the duties and responsibilities of employees. The digital content producers do not believe this will have much effect on their job.

The Employer also argues that the changes to its operations are definite and imminent, but again the Employer is confusing a community of interest argument with the analysis that is used in cases where an employer completely ceases to operate, sells its operations, or fundamentally changes the nature of its business. See, e.g., *Hughes Aircraft Co.*, 308 NLRB 82, 83 (1992); *Martin Marietta Aluminum*, 214 NLRB 646, 646-647 (1974); *Cooper International*, 205 NLRB 1057, 1057 (1973). In situations such as those, the party asserting an imminent cessation of operations bears the burden of proving that cessation is both imminent and definite. *Hughes Aircraft Co.*, 308 NLRB at 83; *Martin Marietta Aluminum*, 214 NLRB at 647. The Board requires concrete evidence, such as announcements of business closure to the public and the employees, termination of employees, or other evidence that the employer has definitively determined the sale, cessation, or fundamental change in the nature of its operations. *Hughes Aircraft Co.*, 308 NLRB at 83; *Martin Marietta Aluminum*, 214 NLRB at 646-647.

Once again, the record in the instant case contains no evidence that the Employer has definite and imminent plans to close its business, terminate employees, sell its business or fundamentally change the nature of its operations in a manner such as that. Instead, the record demonstrates that, at most, the Employer will be changing the physical layout of its Chicago offices by consolidating some of its office space and moving the location where some employees sit. In addition, the record contains evidence that the Employer plans on rolling out a new content management system for its digital content producers to use, but the implementation of a new content management system does not constitute the type of fundamental change to an employer's business as contemplated in *Hughes Aircraft Co.*, supra. Similarly, plans to move employees two floors down from their current location do not constitute the type of fundamental change to an employer's business that would result in the conducting of an election as serving no purpose.

To the extent that the Employer is arguing that the planned changes to the physical layout of its offices and the planned roll out of a new content management system will tip the balance of the community of interest analysis, those factors have been considered and do not change the analysis above.

V. Conclusion

In determining whether the unit sought by the Petitioner is appropriate, I have carefully weighed the community of interest factors and standards set forth in *Warner-Lambert Co.* and *PCC Structural, Inc.* Based on the foregoing, I conclude that it is appropriate for the petitioned-for unit of WBBM-AM digital content producers sought by the Petitioner to vote in a self-determination election in order to determine whether they wish to be included in the existing bargaining unit of WBBM-AM staff newsmen represented by Petitioner. Accordingly, I direct an election in the following unit:

All full-time and regular part-time WBBM-AM digital content producers employed by Entercom Illinois, LLC at its Chicago, Illinois offices; excluding all other digital content producers, all other employees, office clerical employees and guards, professional employees and supervisors as defined in the Act.

VI. Direction of Election

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by the Screen Actors Guild - American Federation of Television and Radio Artists and to be included in the existing unit of staff newsmen, including reporters, correspondents, commentators and analysts, employed by the Company in Chicago.

VII. Election Details

The election will be held on Thursday, January 10, 2019, from 4:30 pm - 6:30 pm, in the 11th floor conference room at Employer's facility located at 180 N. Stetson Avenue, Chicago, IL 60601.

VIII. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending December 28, 2018, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Also eligible to vote using the Board's challenged ballot procedure are those individuals employed in the classifications whose eligibility remains unresolved as specified above and in the Notice of Election.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

IX. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.⁹

To be timely filed and served, the list must be *received* by the regional director and the parties by **January 3, 2019**. The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

X. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those

⁹ The Petitioner has waived its right to possessing the voter list for a full ten days prior to the election.

employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution. Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated at Chicago, Illinois this 31st day of December 2018.

/s/ **Peter Sung Ohr**

Peter Sung Ohr, Regional Director
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